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August 19, 2013

Chairwoman Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Universal Service Contribution Methodology*, WC Docket No. 06-122;
Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Requests for Review of Decisions of Universal Service Administrator by
Airband Communications Inc., et al.

Dear Chairwoman and Commissioners:

By this letter, Airband Communications, Inc. ("Airband") requests that the Commission take prompt action to grant its August 26, 2010 Application for Review ("Application for Review") of the Wireline Competition Bureau's ("Bureau") August 13, 2010 Order rejecting Airband's Emergency Petition for Review and Request for Waiver ("Petition").¹ Consistent with the Bureau's July 22, 2013 decision addressing very similar facts, the Commission should expeditiously grant Airband's Application for Review to remove the extraordinary business uncertainty caused by a five-year resolution process. If the Commission fails to reverse the Bureau's decision, it would essentially broaden the scope of the Commission's universal contribution authority to include both information services and intrastate telecommunications services revenues.²

As explained in Airband's Application for Review, as an interconnected VoIP provider, Airband's first required Form 499-A filing for 2007 inadvertently included exempt information services and intrastate revenues.³ As a result, Airband's reported assessable revenues for the fourth quarter of 2006 were misstated at \$4.9 million, and its universal service contribution level was calculated

¹ Application for Review of Airband Communications, Inc., WC Docket No. 06-122 (August 26, 2010) ("Application for Review").

² *Id.* at 15 ("Yet that is precisely the effect of the Bureau's refusal to grant a waiver. The Bureau's decision to allow the USAC ruling to stand compels Airband to make universal service contributions based on its intrastate and information-service revenues. That is a result plainly inconsistent with the Act and one Congress neither intended nor authorized.").

³ *Id.* at 3.

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at approximately \$500,000.⁴ However, Airband corrected its Form 499-A within the required one-year period of time and thus qualified for the *de minimis* exception meaning no money is actually due.⁵ Nevertheless, the corrected Form 499-A was rejected by the USAC Administrator as untimely because while Airband mailed the form by the payment deadline, it was received by USAC a few days after that date.⁶ Airband subsequently filed a Petition seeking reversal of USAC's decision on the grounds that USAC had misapplied the relevant law regarding filing deadlines or, in the alternative, waiver of the filing deadline is required here where money not owed is sought by the Commission.⁷ Airband's Petition was denied on August 13, 2010 because the Bureau found that certainty in the administration of the universal service fund outweighed any "special circumstances" in seeking waiver of a deadline.⁸ *The Bureau did not address the important legal issue of how an administrative deadline can expand the scope of its authority to reach non-assessable revenue.*⁹

In its Application for Review, Airband demonstrated that the USAC erred in refusing to accept Airband's revised Form 499-A because it was timely filed, and that in any event the enforcement of inconsistent filing deadlines would violate Airband's constitutional due process rights and the Commission's own rules limiting assessable revenue to exclude intrastate and information services revenue.¹⁰ Airband further noted that the Bureau's Order must be reversed because it is arbitrary and capricious under the Administrative Procedure Act ("APA"), and that waiver of the Form 499-A revision deadline is necessary to prevent manifest injustice to Airband.¹¹ Indeed, enforcement of the deadline would threaten Airband's commercial viability.¹²

The Commission has since taken action that further supports a grant of Airband's Application. On July 22, 2013, the Bureau issued an Order granting a petition filed by American Broadband & Telecommunications ("American

⁴ *Id.*

⁵ *Id.* at 6.

⁶ Application for Review at 4.

⁷ *Id.*

⁸ *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, Requests for Review of Decisions of Universal Service Administrator by Airband Communications, Inc. et al.*, Order, 25 FCC Rcd 10861 (WCB 2010).

⁹ *Id.*

¹⁰ Application for Review at 4-9.

¹¹ *Id.* at 10-18.

¹² *Id.* at 2.

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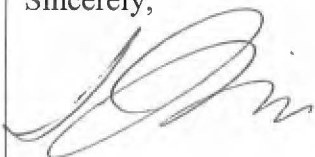
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Broadband”) and reversing a decision by USAC rejecting American Broadband’s Form 499-Q as untimely.¹³ Like Airband, American Broadband made a clerical error on its Form 499-Q that resulted in its projected revenues being inaccurate by a multiple of ten.¹⁴ And, as was the case with Airband, American Broadband’s corrected Form 499-Q was rejected by USAC as untimely. However, the Bureau properly found that “equity and hardship considerations weigh in favor of granting American Broadband’s request for waiver of the FCC Form 499-Q revision deadline.”¹⁵ Specifically, the Bureau found that given the clerical nature and magnitude of the error, good cause existed to waive its deadline.

In light of the Bureau’s recent action with respect to American Broadband, the only proper course is for the Commission to similarly grant Airband’s Application and provide the relief requested therein. By granting the Application, the Commission will bring a more than five year dispute to an end, and act consistent with reasoned regulation and equitable, fair treatment of service providers.

Please contact the undersigned with any questions concerning this matter.

Sincerely,



Thomas J. Navin

cc: Marlene H. Dortch

¹³ *Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator and Request for Waiver by American Broadband & Telecommunications*, Order, DA 13-1608 (2013) (“*American Broadband Order*”).

¹⁴ *Id.* at ¶ 6 (“In its appeal, American Broadband states that it inadvertently added an extra zero to its projected end-user telecommunications revenue on the FCC Form 499-Q, thus reporting ‘grossly inflated revenues.’”).

¹⁵ *Id.* at ¶ 12.